STATE OF MICHIGAN

COURT OF APPEALS

CITY OF BATTLE CREEK,

Plaintiff/Counterdefendant-Appellant,

v

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 355,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
January 17, 2003

No. 228943
Calhoun Circuit Court
LC No. 99-004813-AA

Before: Murray, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order affirming an arbitrator's decision. We affirm.

During the course of collective bargaining, the parties agreed that plaintiff would increase its staffing levels in the fire department. Defendant subsequently filed a grievance alleging that plaintiff had not increased the staffing levels in accordance with the parties' agreement. The matter was submitted to arbitration and the arbitrator determined that, while the parties' agreement was silent about the implementation date of the new manning requirement, the parties intended that the requirement would be implemented as soon as reasonably possible after ratification of the agreement. The arbitrator determined that thirty days from the date of ratification was a reasonable time for plaintiff to make any necessary structural changes to implement the new manpower requirements and, accordingly, established March 4, 1999, as the date when the changes should have been implemented. Plaintiff challenged the arbitrator's ruling in circuit court, arguing that the arbitrator exceeded his authority by establishing an implementation date that neither party expressly agreed to. The circuit court disagreed and affirmed the arbitrator's decision.

Review of an arbitration award is limited. The applicable standard of review was recently set forth in *Lenawee Co Sheriff v Police Officers Labor Council,* 239 Mich App 111, 117-118; 607 NW2d 742 (1999), quoting *Lincoln Park v Lincoln Park Police Officers Ass'n,* 176 Mich App 1, 4; 438 NW2d 875 (1989):

> The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. *Port Huron Area School Dist v Port Huron Ed Ass'n,* 426 Mich 143; 393 NW2d 811 (1986). It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. *Port Huron, supra*. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. *Port Huron, supra*; *Ferndale Ed Ass'n v School Dist for City of Ferndale No 1,* 67 Mich App 637; 242 NW2d 478 (1976).

See also *Michigan State Employees Ass'n v Dep't of Mental Health,* 178 Mich App 581, 583; 444 NW2d 207 (1989). In discussing the scope of an arbitrator's authority, this Court in *Lenawee Co Sheriff, supra* at 118-119, stated:

> Our Supreme Court, in *Port Huron, supra* at 151-152; 393 NW2d 811, discussed the limited scope of judicial review of labor arbitration awards arising from a contractual arbitration process and explained:
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> "An arbitrator who refuses to recognize the terms and conditions expressly circumscribing his jurisdiction and authority in resolving a submitted dispute, thereby exceeding the limits upon which the contractual submission is based, exceeds the consensual authority bestowed upon him by the contract, and the award resulting therefrom is without legal sanction. Whether an arbitrator exceeded his contractual authority is an issue for judicial determination. This well-established principle is within the limited scope of judicial review of labor arbitration awards and was articulated by the United States Supreme Court in *United Steelworkers v Enterprise Wheel & Car Corp*, 363 US 593, 597; 80 S Ct 1358; 4 L Ed 2d 1424 (1960):
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> ' "[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." '
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> In other words, an arbitrator may not act on his own sense of personal justice, but is confined to interpretation and application of the agreement. See *Pontiac v Pontiac Police Supervisors Ass'n*, 181 Mich App 632, 634-635; 450 NW2d 20 (1989).

Here, in its decision, the arbitrator expressly acknowledged the limitations on his authority as set forth in the parties' agreement. Further, we believe that the arbitrator relied upon the "essence of the contract" in setting an implementation date of March 4, 1999. In establishing that date, the arbitrator did not disregard the parties' agreement or add a new contract term, but rather, was construing a contract provision that required plaintiff to increase its staffing. An arbitrator is permitted to construe ambiguous language even if he cannot disregard or modify plain or unambiguous terms of the contract. *Sears, Roebuck & Co v Teamsters Local Union No 243*, 683 F2d 154, 155 (CA 6, 1982). Moreover, where a term is lacking in a collective bargaining agreement, an arbitrator properly may infer a reasonable term. *Id*. at 156. See also *Opdyke Investment Co v Norris Grain Co*, 413 Mich 354, 368; 320 NW2d 836 (1982) (under contract law, if no time for performance is expressed on the face of an agreement, in the absence of an expression of a contrary intent, the law will presume a reasonable time for performance). Here, the arbitrator determined that the parties intended for the manning provision to be implemented as soon as reasonably possible after ratification of the agreement, which he determined to be March 4, 1999. We conclude that the arbitrator acted within his contractual authority in establishing that date.

We also conclude that the arbitrator had the authority to fashion a remedy in this case. As this Court stated in *Michigan Ass'n of Police v City of Pontiac*, 177 Mich App 752, 759-760; 442 NW2d 773 (1989):

> It is accepted that an arbitrator, if not specifically limited by the terms of the collective bargaining agreement, is free to fashion a remedy which considers the relative faults of the parties. See *Zeviar v Local No 2747, Airline, Aerospace & Allied Employees*, 733 F2d 556 (CA 8, 1984) (employee reinstated but with only half of lost wages because she was also at fault), and *Air Line Pilots Ass'n, International v Eastern Air Lines, Inc*, 632 F2d 1321 (CA 5, 1980) (reinstatement without full benefits upheld). In *Brotherhood of Railway, Airline & Steamship Clerks v Kansas City Terminal Railway Co*, 587 F2d 903, 906-907 (CA 8, 1978), cert den 441 US 907; 99 S Ct 1997; 60 L Ed 2d 376 (1979), the court, quoting *Diamond v Terminal Railway Alabama State Docks*, 421 F2d 228, 233 (CA 5, 1970), stated the test as "not whether the reviewing court agrees with the Board's interpretation of the bargaining contract, but whether the remedy fashioned by the Board is rationally explainable as a logical means of furthering the aims of that contract." See also *Walsh v Union Pacific R Co*, 803 F2d 412 (CA 8, 1986), cert den 482 US 928; 107 S Ct 3213; 96 L Ed 2d 699 (1987).
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> The Supreme Court reaffirmed this broad grant of authority to labor arbitrators in *United Paperworkers International Union, AFL-CIO v Misco, Inc*, 484 US [29]; 108 S Ct 364, 371; 98 L Ed 2d 286, 299 (1987), stating:
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> "As the Court has said, the arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. But as long as the arbitrator is even arguably construing or

> applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision."
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> When parties agree to submit a matter to arbitration, they invest the arbitrator with sufficient discretion to resolve their dispute in a manner which is appropriate under the circumstances. Where the collective bargaining agreement is silent as to permissible remedies, an arbitrator does not add to the obligations contractually assumed by the parties by fashioning a remedy which is appropriate under the circumstances. *Wayne Co Bd of Comm'rs v National Union of Police Officers*, 75 Mich App 375, 381; 254 NW2d 896 (1977), lv den 401 Mich 817 (1977).

In *Michigan Ass'n of Police, supra* at 760-761, this Court held that the arbitrator acted within his authority by imposing an additional term of six months' probation as a condition of reinstatement for an employee when there was nothing in the parties' agreement that barred such a remedy. The Court also held that the arbitrator's remedy remained "true to the essence of the contract." *Id*. at 761.

In this case, the arbitrator determined that the parties agreed on new staffing levels, which they intended would go into effect as soon as reasonably possible after ratification. It was not improper for the arbitrator to set a specific date for implementation, consistent with its finding of reasonableness. An arbitrator generally has broad authority in fashioning a remedy, so long as the remedy is consistent with the parties' contract or "draws its essence" from the parties' contract. *Kraft Foods, Inc v Office and Professional Employees Internat'l Union, AFL-CIO, Local 1295*, 203 F3d 98, 102-103 (CA 1, 2000). Here, the arbitrator's decision is consistent with the parties' agreement and is not contrary to any limitation therein regarding remedy. Accordingly, we affirm the circuit court's order enforcing the arbitrator's decision.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald